IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

MFA.No. 1256 of 2002()

OPMV.571/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA
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APPELLANT: PETITIONER

DAS S/O. C.M.MONY, PON NAGAR,
COLONY, VALLAKKADAVU KARA, MANCHUMALA VILLAGE,
VANDIPERIYAR.

BY ADV. SRI.MATHEW JOHN (K)
SRI.BABY THOMAS

RESPONDENTS:
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1. JOHN @ BABU S/O.KUTTAPPAN MUKALEL HOUSE,
KOLLAMPATTADA BHAGAM, KUMILY VILLAGE.

2. MUHAMMED RAFEEQUE S/O. AMEER,
SULTHAN, KANDOTHIL HOUSE, ROSAPPUKANDOM BHAGOM,
KUMILY.

3. NATIONAL INSURANCE CO.LTD., BRANCH,
THODUPUZHA.

BY ADV. SRI.E.M.JOSEPH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.1256 OF 20O2

Dated this the 15th day of November, 2007

JUDGMENT

Koshy, J.

The appellant-petitioner while travelling in a jeep suffered personal injuries the jeep overturned. He was travelling in a jeep as a fare paying passenger. He claimed a compensation of Rs.3,00,000/-. Total compensation of Rs.1,26,350/- was awarded by the Tribunal. The Tribunal directed the third respondent Insurance Company to deposit the amount. The fact that the vehicle was covered under valid policy issued by the Insurance Company was not disputed. With regard to the injuries, the Tribunal has considered the medical certificate and also examined the petitioner and observed as follows:

> "Exhibit A3 is the wound certificate of P.H. Cetre Vandiperiyar which says that the petitioner was admitted on 28.12.95. The injuries are crush injury right foot, suspected fracture of bones of foot, abrated wound right 1 x 1cm. He was referred to Medical College Hospital Kottayam on the same day. Exhibit A4 is the prescription of Dr.P.H.John dated 7.8.96. Exhibit A5 and A5(a) are the discharge card of Medical College Hospital, Kottayam. The petitioner was admitted there on 28.12.95 and discharged on 6.2.96. The injuries are crush injury right foot, wound

> debridement made. Exhibit A6 is the disability certificate from M.C.H. Kottayam which says that the disability caused to the petitioner is assessed to 25% and it comes under mild. It also shows that post dramatic stiffness of ankle and foot right. Exhibit A11 is the medical certificate from Directorate of Medical Education which says that the petitioner was admitted on 28.12.95 and discharged on 6.2.96. After discharge, the patient is suffering pain and stiffness ankle joint right."

2. 2Again, apart from considering the photographs, Exhibit A9 series showing the injuries, the Tribunal has held as follows:

> "The petitioner appeared and I have noticed the injury on his right foot and ankle, wound not healed, he could not walk freely and suffering pain. Considering the injuries sustained by him, he could not continue his work even now."

So, that shows that even after two years of the accident, he was unable to work. According to the petitioner, he was a timber lorry worker and he will not be able to continue his job and he is entitled to 100% disability. But the doctor certified 25% disability and he is only entitled to 25% compensation. He was aged 39 at the time of accident. Taking second schedule for guidance, 16 is the multiplier. It was argued that in view of the increased expectancy of age and slashing of interest rate, a higher multiplier should be taken. We are of the opinion that taking second schedule as guideline, only 16 can

be taken as the multiplier in this case. It is further argued by the petitioner that only Rs.2,400/- was fixed as the family income. According to him, being a timber lorry worker, he was getting more than Rs.3,000/- per month. However, in the absence of data, we are not changing the monthly income fixed by the Tribunal. If that be so, compensation payable for 25% disability will be:

$$2400 \times 12 \times \frac{25}{100} \times 16 = 1,15,200.$$

Towards continuing permanent disability and loss of earning power, the Tribunal awarded Rs.25,000/- only. Therefore, he is entitled to additional amount of Rs.90,200/-. As per the medical records, the Tribunal noticed that he needs future treatment, but no amount was awarded on that count. But, considering the total amount of compensation awarded, he can use the interest amount for future treatment. We award no amount on that count. The Tribunal has assessed compensation under other heads in a just and reasonable manner. Therefore, additional amount payable will be Rs.90,200/- over and above the decreed amount by the Tribunal. The above amount should be deposited by the third respondent Insurance Company with 7.5% from the date of application till the date of

deposit over and above the amount ordered by the Tribunal. On deposit of the above amount, the petitioner is allowed to withdraw the same.

The appeal is allowed, partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1256 OF 2002

JUDGMENT

15.11.2007